

**MPD 2190.1
REVISION C**

**EFFECTIVE DATE: July 27, 2006
EXPIRATION DATE: July 27, 2011**

MARSHALL POLICY DIRECTIVE

AS01

MSFC EXPORT CONTROL PROGRAM

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Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 2 of 14

DOCUMENT HISTORY LOG

Status (Baseline/ Revision/ Canceled)	Document Revision	Effective Date	Description
Baseline		5/10/00	Document converted from MWI 2190.1 to this Directive.
Revision	A	11/13/02	Update Paragraph 9. RECORDS; Change Documentation Period of Time FROM 6 TO 5 years and provide the Final Disposition of Quality Records.
Revision	B	10/7/2004	Included NEW requirements for "Destination Control Statement", "Marking" and Program/Project Export Control Plans; added definitions, changed the Office of Responsibility from VS01 to AD01; removed ambiguity regarding requirements; Converted all NPG and MPG with NPR and MPR; changed the font to Times New Roman 12;.
Revision	C	7/27/2006	Changed the Office of Responsibility from AD01 to AS01. Removed NPD 2210.1, "External Release of NASA Software" from the Applicable Documents and all references. Changed the name and number from NPR 1620.1 to NPR 1600.1, "NASA Security Program Procedural Requirements." Added definitions for Public Domain and Technical Data. Added reference to MPR 1440.2, "MSFC Records Management Program" and NPR 1441.1, "NASA Records Retention Schedules," and changed retention period FROM 5 years TO 10 years. Removed MSFC Form 4336. Added CER Training Requirement.

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Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 3 of 14

1. PURPOSE

This Marshall Policy Directive (MPD) states Marshall Space Flight Center (MSFC) Export Control Program (ECP) policy, formal delegations of authority, responsibilities, and principal policy relationships. This MPD establishes the MSFC Export Control Program for all products, including hardware, software, technology, technical information, and defense services, which are to be made available, transferred, or shipped outside of the United States of America (USA) or to a “Foreign Person” or entity within the USA. This program ensures that all items, which MSFC makes available or transfers to a foreign country, foreign person, or entity conform to the MSFC Export Control Program, NASA, and other Federal Agency rules or regulations. MSFC Export Control Program shall ensure compliance with the U.S. Export Control Laws and Regulations through management, education and planning of the Marshall Space Flight Center’s export activities. This MPD identifies the Export Control Program roles and responsibilities with regard to Scientific and Technical Information (STI), foreign visitors, travelers, workers, software release, Web site development, electronic media information, and shipping.

2. APPLICABILITY

This MPD applies to all MSFC organizations which send or transmit hardware, software, technology, or technical information to destinations outside the United States, to a “Foreign Person” or entity within the United States, or which place such information in the public domain.

3. AUTHORITY

- a. Export Control Laws and Regulations of the United States
- b. NPD 2190.1, “NASA Export Control Program”
- c. NPR 2190.1, “NASA Export Control Program”

4. APPLICABLE DOCUMENTS

- a. NPD 1050.1, “Authority to Enter into Space Act Agreements”
- b. NPD 2190.1, “NASA Export Control Program”
- c. NPD 2200.1, “Management of NASA Scientific and Technical Information (STI)”
- e. NPD 2800.1, “Managing Information Technology”
- f. NPR 1371.2, “NASA Procedural Requirements for Processing Requests for Access to NASA Installations or Facilities by Foreign Nationals or US Citizens Who Are Representatives of Foreign Entities”

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 4 of 14

- g. NPR 1441.1, “NASA Records Retention Schedules (NRRS)”
- h. NPR 1600.1, “NASA Security Program Procedural Requirements”
- i. NPR 2200.2, “Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information (STI)”
- j. NPR 2210.1, “External Release of NASA Software”
- k. NPR 2800.1, “Managing Information Technology”
- l. NPR 7120.5, “NASA Program and Project Management Processes and Requirements”
- m. MPD 2810.1, “Security of Information Technology”
- n. MPR 1371.1, “Procedural Requirements for Processing Foreign Visitor Requests”
- o. MPR 1440.2, “MSFC Records Management Program”
- p. MPR 1600.1, “MSFC Security Procedural Requirements”
- q. MPR 2220.1, “Scientific and Technical Publications”
- r. MPR 2810.1, “Security of Information Technology”
- s. MWI 6000.1, “Procurement Traffic Management and Freight Traffic Actions”

5. REFERENCES

- a. 10 CFR, Nuclear Regulatory Commission Regulations (NRC) Part 110
- b. 15 CFR, Export Administration Regulations (EAR) Parts 730-799
- c. 22 CFR, International Traffic in Arms Regulations (ITAR) Parts 120-130
- d. 27 CFR, Alcohol, Tobacco & Firearms (ATF) Parts 1-199
- e. 31 CFR, Foreign Assets Treasury Control (FATC) Parts 500-597

6. DEFINITIONS

- a. Bureau of Industry and Security (BIS) is a component of the U.S. Department of Commerce (DOC), which administers the Export Administration Regulations (EAR).

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 5 of 14

b. Classification is the process for determining the relevant entry number or category for commodities or technologies that fall under the jurisdiction of the DOC or the U.S. Department of State (DOS). Classification takes place after the jurisdiction of the item has been determined. Items under the jurisdiction of the DOC can be found in the EAR and items under the jurisdiction of the DOS can be found on the U.S. Munitions List (USML) in the International Traffic In Arms Regulations (ITAR).

c. Defense Service is the furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles as defined in the ITAR.

d. Export is the transfer of anything (e.g., hardware, software, commodities, technology, information) to a “Foreign Country,” “Foreign Person,” “Foreign Entity,” or foreign destination by any means (e.g., mail, facsimile, e-mail, telephone, face-to-face discussion, courier, Web site), anywhere (e.g., in the United States, overseas, in space), anytime, or a transfer to a “U.S. Person” representing a “Foreign Person.” An export also occurs when information is placed on a publicly accessible email, Web site, file transfer protocol (FTP), gopher, and peer-to-peer networks.

e. Export Administration Regulations (EAR) is the set of regulations that control the export of commercial and dual-use items that are designed for commercial use but may have military use as well. The Bureau of Industry and Security (BIS) has the responsibility for the EAR under the Export Administration Act of 1979.

f. Export Control Technology List is a list of technologies (Commodities, Technical Data and Software), under the control of MSFC, which are under the jurisdiction of U.S. Export Regulations. Technologies on the list require export documentation in order to be exported out of the U.S. or to a foreign entity within the U.S. The Export Control Technology List is compiled from input provided by MSFC Managers and is maintained by the Export Control Program.

g. Foreign Person for purposes of export control regulation is any person who is not a U.S. citizen, nor a permanent resident alien, nor a “Protected Individual” of the United States.

h. Office of Defense Trade Control (ODTC) is the component of the U.S. Department of State (DOS), which administers the International Traffic in Arms Regulations (ITAR).

i. Public Domain is information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores.

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 6 of 14

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information.

(3) Through second class mailing privileges granted by the U.S. Government.

(4) **At libraries open to the public or from which the public can obtain documents.**

(5) Through patents available at any patent office.

(6) Through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition generally accessible to the public in the United States.

(7) Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. Government department or agency.

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the science community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community as distinguished from research (the results of which are) restricted for proprietary reasons, or specific U.S. Government access and dissemination controls. University research (see 22 CFR, Part 120.6 “will not be”) is not considered fundamental research if:

(a) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(b) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

j. Technical Data is information, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instruction and documentation (The engineering know-how or methodology).

k. U.S. Person is a natural person who is a lawful permanent resident as defined in 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization, or group that is incorporated to do business in the U.S. It also includes any governmental (Federal, state, or local) entity.

7. POLICY

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 7 of 14

It is MSFC's Export Control Program Policy to ensure all MSFC programs and projects are carried out in compliance with NPD 2190.1, "NASA Export Control Program Policy Directive," NPR 2190.1, "NASA Export Control Program," and the export control laws and regulations of the United States. It is the responsibility of every MSFC official and employee to ensure that the export control policies of the United States, including nonproliferation objectives, are fully observed in the pursuit of NASA's mission.

No export of commodities, technologies, or software shall be made to any foreign entity under any NASA program until the Headquarters Export Administrator (HEA), Center Export Administrator (CEA), or Program/Project Managers are confident that such exports are in conformity with U.S. export control regulations.

8. RESPONSIBILITIES

a. Center Export Administrator (CEA). The MSFC CEA shall be appointed by the MSFC Center Director. The CEA shall be responsible for assessing and ensuring that all MSFC activities are compliant with Export Control Laws and Regulations of the United States. Specifically, the CEA shall:

- (1) Serve as the Center resident expert on all matters related to export control and as the principal Center point-of-contact with the HEA.
- (2) Maintain a thorough knowledge of current MSFC critical technologies, NPD 2190.1, "NASA Export Control Program Policy Directive," NPR 2190.1, "NASA Export Control Program Procedural Requirements," 15 CFR, Parts 730-774, Export Administration Regulations (EAR), and 22 CFR, Parts 120-130, International Traffic in Arms Regulations (ITAR) provisions and requirements applicable to Center programs and activities, and assist in developing Center policy and procedures.
- (3) Ensure the completion and maintenance (recordkeeping) of necessary licensing and/or exemption/exception documents regarding specific exports pursuant to Center programs which are subject to NPR 1441.1, "NASA Records Retention Schedules," MPR 1440.2. "MSFC Records Management Program," the EAR and the ITAR (completion of export control documents shall be accomplished by knowledgeable project managers, Center Export Representatives (CERs), or the CEA).
- (4) Support the Center process for approving foreign visitors and hires, providing advice and guidance to the Center International Visit Coordinator and to MSFC personnel who serve as sponsors for such visitors and hires, and providing assistance in the development of appropriate security plans/technology export control plans per policy requirements in NPR 1600.1, "NASA Security Program Procedural Requirements," NPR 1371.2, "Procedural Requirements for Processing Requests for Access to NASA installations or Facilities by Foreign Nationals or US Citizens Who Are Representatives of Foreign Entities," and MPR 1371.1, "Procedural Requirements for Processing Foreign Visitor Requests."

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 8 of 14

(5) Assist program and project managers in the planning and control of exports as required in NPD 7120.5, “NASA Program and Project Management Processes and Requirements.” Assist program and project personnel in determining the appropriate export controls for publishing, disseminating, marketing and safeguarding of scientific and technical information under the policy set forth in NPD 2200.1, “Management of NASA Scientific and Technical Information (STI),” and NPR 2200.2, “Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information,” MPR 1600.1, “MSFC Security Procedural Requirements,” and MPR 2220.1, “Scientific and Technical Publications.”

(6) Assist Center Contracting Officers and Contracting Officer Technical Representatives (COTRs) in procurement-related matters involving export control (e.g., providing guidance on entering into contracts with foreign entities, responding to contractor questions/requests, drafting of EAR license exceptions or ITAR exemptions for use by the contractor, drafting of appropriate clauses in NASA solicitations).

(7) Assist the Chief Information Officer (CIO) in effecting local policy on placing information on NASA Web sites.

(8) Assist the Center Software Release Authority in making determinations as to export control restrictions per NPR 2210.1, “External Release of NASA Software.”

(9) Coordinate with Center Export Counsel, Transportation Officers, and Project Managers on export control matters affecting Center programs and activities. Advise Center Transportation Officers on questions related to international shipments (including foreign imports of commodities). Where the CEA, in consultation with these officials, determines that a proposed export would not be in conformity with NASA policy, the EAR or the ITAR, the CEA shall have the authority to suspend such activity pending resolution with the concerned offices or agencies.

(10) Establish a Center training plan for responsible Center Export Control Program personnel and arrange for or provide training.

(11) Review locally and consult with the HEA on all Center commodity jurisdiction, classification and licensing requests for Center projects and, after local approval, route to the HEA for formal transmittal to and processing by the Bureau of Industry and Security (BIS) or the Office of Defense Trade Control (ODTC).

(12) Serve as the interface with the HEA for review and comment of all contractor requested EAR and ITAR license applications related to Center programs.

(13) Serve as the interface with the HEA for review and comment of all Committee on Foreign Investment in the United States (CFIUS) cases related to Center programs.

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 9 of 14

(14) Serve as the Center export control point-of-contact for General Accounting Office (GAO) and Inspector General (IG) audits related to export control matters.

(15) Ensure Center follow-up and closeout on recommendations from the annual audit and, the GAO and IG audits related to export control.

(16) Periodically disseminate export control information to appropriate Center personnel.

(17) Establish contacts with Center contractors involved in Center programs with international content to share information and to work issues related to licenses and/or granting or use of NASA authorized EAR license exceptions or ITAR exemptions.

(18) As applicable, assist the International Space Station (ISS) Program in performing EAR required audits and reviews of NASA contractors authorized to use the BIS approved exceptions and other NASA international agreements and licenses.

(19) Maintain a reference library of relevant policies, regulations, international agreements, etc.

b. Assistant Center Export Administrator (ACEA). The MSFC ACEA shall be appointed by the MSFC Center Export Administrator. The Assistant Center Export Administrator shall support the CEA by overseeing the daily operations of the Export Control Program in all areas of CEA responsibility.

c. Center Export Counsel (CEC). The Center Export Counsel shall be appointed by the MSFC Chief Counsel and shall be responsible for providing legal guidance to the CEA and other Export Control responsibilities in NASA export control matters under the Government Export Regulations. The CEC shall:

(1) Assist the CEA in reviewing specific exports under NASA programs,

(2) Inform the Export Control Personnel of statutory and regulatory developments in the U.S. export control system.

d. Center Program/Project/Department/Office Managers. All MSFC Managers shall ensure that exports are consistent with NASA Headquarters Program Office policy. All MSFC Program/Projects shall develop a Program/Project Export Control Plan under the requirements set forth in NPR 7120.5, "NASA Program and Project Management Processes and Requirements." This Plan shall include "export control milestones" in their program/project schedules to ensure that export control matters are considered and resolved in a timely manner, in advance of prospective shipping or export dates. In addition, all MSFC Managers shall, in consultation with the CEA, ensure that activities under their direction include:

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 10 of 14

(1) Appropriate safeguards under the requirements set forth in NPR 1600.1, “NASA Security Program Procedural Requirement,” and MPR 1600.1, “MSFC Security Procedural Requirements,” for commodities, Web pages, technologies, and software pursuant to agreements.

(2) Procedures for exporting commodities, technologies, and software are done in accordance with the MSFC Export Control Program, NASA, and other Federal Agency rules or regulations.

(3) Provisions of necessary technical information to the CEA to permit a sound determination as to the need for export licenses or other export related documentation in specific activities, and for the completion of such documentation, where necessary.

(4) Scheduling adequate lead time for the submission, processing, and receipt of export licenses, where necessary.

(5) Development of required export control documentation.

(6) Appointment of Center Export Representatives from their organization and notify the CEA and ACEA.

(7) Appropriate “Markings” and “Destination Control Statements” under the requirements set forth in NPR 2190.1, “NASA Export Control Program,” for all export items.

e. Center Transportation Officer (CTO). The MSFC Transportation Officer shall, in consultation with the CEA, ensure that all exports of commodities, technologies, and software are accompanied by the appropriate and accurate export control documentation, including licenses, Foreign Consignee Statements, or other authorizing documents and marking, as needed, as well as Shipper’s Export Declarations (SEDs) in all appropriate cases. The CTO shall be authorized to sign SEDs but is not authorized to sign export-licensing documents.

f. Chief Information Officer (CIO). The MSFC Chief Information Officer shall be appointed by the MSFC Center Director and shall be responsible for all Information Technology (IT) policies, standards and procedures set forth in NPD 2800.1, “Managing Information Technology,” as well as IT security requirements set forth in MPD 2810.1, “Security of Information Technology,” and MPR 2810.1, “Security of Information Technology.” The CIO shall work with the ECP to ensure only appropriate information is released.

g. Center Document Availability Authorization Representative (DAAR). The Center Director shall appoint the Center Document Availability Authorization Representative (DAAR). The Center Document Availability Authorization Representative shall:

(1) Provide guidance to all organizations relating to the release of Scientific and Technical Information and the completion of NASA Form 1676, “NASA Scientific and Technical Document Availability Authorization (DAA),” per requirements set forth in NPR 2200.1,

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 11 of 14

“Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information (STI).”

(2) Receive, review, log, and process all DAA NASA 1676 Forms from the CERs or from NASA contractor personnel.

(3) Identify appropriate Program/Project Officer or Technical Monitor on contractor papers.

(4) Ensure that approved DAA NASA 1676 Forms are properly maintained in support of formal audits of the export function.

h. Center Export Representative (CER). The CERs shall be appointed by each Directorate/Department/Office Head and shall serve as the focal point within the organization for exports of MSFC commodities, technologies, and software. The CER shall consult with the CEA and/or ACEA, on matters of export control. The CEA shall delegate the following function to the CERs:

(1) Interpret Export Regulations and provide advice to the CER’s organization; this includes but is not limited to the classification of commodities, the need for license, and the applicability of exceptions and exemptions.

(2) Guide the preparation and implementation of the organization’s Export Control Plan(s).

(3) Primary point-of-contact for the CEA for their organization.

(4) Ensure the organization’s compliance with the export regulations.

(5) Provide export-related input for the preparation of International Agreements (IA) for the organization’s programs/projects.

(6) Update and coordinate the organization’s input to the Export Control Technology List (identify and coordinate the classification of technologies).

(7) Review and approve or deny the organization’s “Export Clearance Information Sheets (ECIS) MSFC Form 4312.”

(8) Review the organization’s “Foreign National/Foreign Representative Visit Request,” per MPR 1371.1, “Procedural Requirements for Processing Foreign Visitor Requests,” for export control issues, concur or non-concur, and provide comments.

(9) Assist persons in the organization on the preparation and implementation of a Technology Transfer Control Plan (TTCP) for Foreign Visitors and Workers.

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 12 of 14

(10) Provide guidance to the organization for foreign travel on the exporting of NASA sensitive but unclassified commodities. Ensure all items, which MSFC makes available or transfers to a foreign country, foreign person, or entity conforms to the MSFC Export Control Program and the US Export Laws or regulations.

(11) Review, and approve or deny the organization's "NASA Scientific and Technical Document Availability Authorization (DAA)," NASA Form 1676, for export issues.

(12) Prepare input for each license required and provide support for the processing of the license request.

(13) Provide assistance to the organization in the preparation of export documentation (e.g., ECISs and license requests).

(14) Ensure that the organization's export records are being properly maintained.

(15) Perform informal internal reviews of the export activities and support formal audits of the internal export function.

(16) Train project personnel concerning export issues in areas such as Technical Interchange Meetings (TIMs) and teleconferences, guidelines for faxing and e-mailing, etc.

(17) Review organization's contracts with COTRs, to make sure export regulations are being addressed.

(18) Assist in the functional definition of the export processes and maintain and improve the processes.

(19) Stay current in export control issues. Each CER shall attend training at least every other year.

(20) Advise exporter on all information to be placed on a Web page.

(21) Assist MSFC personnel in the preparation of MSFC Form 2896, "MSFC Documentation Repository Document Input Record," to determine if there are any export-related distribution restrictions applicable to all documents, including contracted documents.

(22) Ensure that all export control documentation includes a "Destination Control Statement" and proper "Export Control Markings" before exporting.

i. Export Control Auditor (ECA). The Export Control Auditor (ECA) shall be appointed by the Center Director and shall:

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 13 of 14

- (1) Audit, at least annually, the MSFC export control functions, including all activities and major programs that engage in exports.
- (2) Review export-related files.
- (3) Examine MSFC documentation for effecting exports under NASA obtained export licenses.
- (4) Examine a sampling of the documentation (Shippers Export Declarations, commercial invoices, etc.) for other exports paying particular attention to the items exported and the stated authority for the export.
- (5) Prepare an audit report to the CEA which includes a description of the review process undertaken, the findings and any recommendations/suggestions.

j. Exporter. An MSFC exporter shall:

- (1) Prepare necessary export-related documentation and statements which includes but is not limited to a MSFC Form 4312, a NASA Form 1676 per the procedure in MPR 2220.1, "Scientific and Technical Publications," a NASA Form 1686 per the procedure in NPR 1600.1 "NASA Security Program Procedural Requirements," a "Destination Control Statement," or an "Export Control Markings" statement for items that are export controlled.
- (2) Consult with CER/CEA or ACEA.
- (3) Comply with Export Control Regulations.
- (4) Prepare shipments per work instructions set forth in MWI 6000.1, "Procurement Traffic Management and Freight Traffic Actions."

k. Center Export Training Specialist (CETS) shall be appointed by the Center Export Administrator and shall:

- (1) Manage the export control training courses for the Center including annual updates for all CERs and CEA.
- (2) Manage the Export Control Program Web page within the MSFC Center Operations Web site

9. RECORDS

Under the requirements set forth in MPR 1440.2, "MSFC Records Management Program," and NPR 1441.1, "NASA Records Retention Schedules," (NRRS 2/7.5/A), the CEA shall retain the following records:

Marshall Policy Directive AS01		
MSFC Export Control Program	MPD 2190.1	Revision: C
	Date: July 27, 2006	Page 14 of 14

Record	Repository	Period of Time*	Final Disposition
Record of Annual CEA, ACEA, CER, Management, and General Training	Maintained by Export Control, Protective Services	Retain 10 years from the completion date of the activity.	Destroy/Delete when 10 years old.
Export Clearance Information Sheets (ECIS) MSFC Form 4312	Maintained Export Control, Protective Services	Retain 10 years from the completion date of the activity.	Destroy/Delete when 10 years old.
Annual Export Control Program Audit Report	Maintained by Export Control, Protective Services	Retain 10 years from the completion date of the activity.	Destroy/Delete when 10 years old.

* For paper records, retire to the Federal Records Center 5 years after the export approval date or the expiration of the license, whichever is longer. Maintain electronic records onsite.

10. MEASUREMENT

Results and statistics on audit findings and export control traffic shall be retained by the CEA to measure the efficiency of the MSFC export control program. Audits of planning, goals, objectives, and performance targets shall be the responsibility of the ECA. The audit findings shall be retained by the CEA as a record.

11. CANCELLATION

MPD 2190.1B dated October 7, 2004

*Original signed by
Robin N. Henderson*

David A. King
Director